

**[04] “In the Light of the Specification”**

[05] The Examiner states “Although the claims are interpreted in the light of the specification, limitations from the specification are not read into the claims.” There are two parts to this statement: 1) the claims are interpreted in the light of the specification; and 2) limitations from the specification are not read into the claims. Part 2 does not repudiate Part 1, which, in the present context, requires that the term “tier” be interpreted in a manner consistent with its usage in the Specification.

[06] Every word has a definition and many have more than one definition. It is not feasible to include comprehensive glossaries within the body of each claim. However, it is feasible and appropriate to refer to the specification to resolve possible ambiguities in claim language. To remove any possible ambiguity, the Specification not only presents several examples, but explicitly defines the usage of “tier” in the Summary at paragraph [0019] in a manner consistent with usage in the art.

[07] In reaching a contrary conclusion, the Examiner states (item 6): “Because the resource monitor and admission control gateway operate independently of each other, Examiner considers them to be in different tiers.” The Examiner appears to be applying a definition of “tier” that is dependent on whether functions operate independently of each other. The Examiner has provided no authority for this definition of “tier” and Applicants are not aware of any definition of “tier” that corresponds to “operate independently”. The Examiner’s definition conflicts with the definition set forth in Summary paragraph [0019] and with the examples given in the Detailed Description.

[08] Furthermore, the Detailed Description suggests, e.g., paragraph [0031], that a tier can run several applications concurrently; while the Description does not explicitly address the issue, one skilled in the art would recognize that some applications on the application tier could operate independently of each other. Thus, one skilled in the art would not apply the Examiner's definition of "tier".

[09] In accordance with the foregoing, the Examiner has erred in applying a definition of "tier" that is unsupported by the prior art and inconsistent with the usage in the Specification. Since the Examiner applied the wrong definition of a claim term, the rejection of Claim 1 in is error and should be withdrawn. Since the same error is carried forward to the rejections of the other claims, those rejections should be withdrawn as well.

#### **[10] "Operate Independently"**

[11] Even given a definition of "tier" that was satisfied by elements that "operate independently", it is hard to understand how the Examiner concluded that Phaal's admissions control gateway operates independently of Phaal's resource monitor. Fig. 2, on which the Examiner relies to establish independent operation, shows that the admission control gateway (25) depends on the resource monitor, a function of which is indicated at step 47 of Phaal, Fig. 2. In fact, Phaal teaches that the resource monitor and the admissions control gateway interact every time a message is received that is not part of an in-progress session (Phaal, Col. 5, line 57 to Col. 6, line 15). So, it is clear that Phaal's admissions control gateway interacts with and makes decisions that depend on responses from Phaal's resource monitor.

[12] Accordingly, it is clear that Phaal does not disclose an admissions control gateway that operates independently of a resource monitor. Thus, even if the Examiner's definition for "tier" is applied, Phaal does not anticipate the present invention.

[13] CONCLUSION

[14] The prior art does not disclose a system or method with a resource monitor on a different tier than an admissions control gateway. This conclusion holds whether "tier" is defined correctly in the light of the specification, or erroneously, as proposed in the Office Action. As all rejections rely on the prior art disclosing what it does not disclose, they are all in error and should be withdrawn.

Respectfully submitted



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